HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT APPEAL No. 356 OF 2007

Between:

Indian Oil Corporation Limited,
Represented by its Chief L.P.G. Manager,
A.P. State Office, 3-6-436 to 438, II Floor,
Naspur House, Himayathnagar,
Hyderabad and another.

… Appellants

AND

M/s. Balaji Gas Agencies, rep., by its
Partner Sri C.V. Venugopal Reddy,
S/o. Sri Chenchu Reddy, D.No.9-429,
Srinivasanagar, Proddatur, Kadapa District
and another.

… Respondents

:: JUDGMENT ::

Counsel for the appellants : Shri R. Raghunandan

Counsel for respondent No.1 : Shri V. Venkataramana

Dated: 26.04.2007

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Per C.V.Nagarjuna Reddy, J

This is an appeal by Indian Oil Corporation Limited and another for setting aside order dated 2-4-2007 passed by the learned Single Judge in WVMP No.563 of 2007 in Writ Petition No.3235 of 2007 whereby he declined to vacate the interim stay granted in favour of respondent No.1 in WPMP.No.4131 of 2007 in the aforementioned writ petition.

Respondent No.2 is an Ex-service man. He was appointed as LPG distributor by appellant No.1 for Proddutur, Kadapa District. For this purpose, agreement dated 9-5-1977 was entered into between the representative of appellant No.1 and respondent No.2. After about nine years, appellant No.1 permitted respondent No.2 to enter into a partnership with Shri C. Venugopal Reddy for distribution of LPG cylinders in the name and style of M/s.Balaji Gas Agencies (respondent No.1 herein) with respondent No.2 having 51% share and respondent No.1 having 49% share. On 20.8.1986, a fresh Distribution Agreement was entered into between appellant No.1 and respondent Nos.1 and 2.

In July, 2006, respondent No.2 sent a letter to appellant No.1 wherein he expressed his wish to surrender the distributorship. He reiterated this to the committee of officers belonging to appellant No.1. After taking cognizance of this development, the Chief Manager of appellant No.1 issued show cause notice dated 18.9.2006 to Sri C.

Venugopal Reddy and called upon him to show cause why distributorship may not be terminated on the ground of violation of the terms and conditions of agreement. The latter sent reply dated 25-10-2006 and pleaded against termination of the Distribution Agreement by claiming that respondent No.1 has not violated the conditions of Distribution Agreement. Thereafter, the first appellant vide its order dated 13.2.2007 terminated the distributorship standing in favour of respondent No.1. The latter challenged the same in Writ Petition No.3235 of 2007. It also filed WPMP.No.4131 of 2007 for issue of an interim direction to the appellants to restore the distributorship agency. On 20.2.2007, the learned Single Judge granted interim direction as prayed for. On notice, the appellants filed WVMP No.563 of 2007 for vacating the interim order. The same was dismissed by the learned Single Judge on the premise that respondent No.1 has not violated terms, conditions, covenants and stipulations contained in the agreement. The learned Single Judge further observed that the letters written by respondent No.2 cannot be construed as dissolution of the partnership firm.

Shri R. Raghunandan, learned counsel for the appellants argued that termination of distributorship agreement of respondent No.1 is legally correct and justified because respondent No.2, who held majority share in the partnership firm had written a letter in the month of July 2006 expressing his wish to surrender the distributorship and reiterated the same vide his letter dated 16-8-2006 after a committee of officers of the first appellant appraised him of the consequences of his earlier letter. Learned counsel submitted that in view of the virtual resignation tendered by respondent No.2, appellant No.1 had rightly terminated the Distribution Agreement. Shri Raghunandan further argued that the learned Single Judge should have dismissed the writ

petition at the threshold because the suit for injunction filed by respondent No.1 through its partner Shri C. Venugopal Reddy is pending in the Court of Additional District Judge, Proddutur.

Sri V. Venkataramana, learned counsel for the 1st respondent argued that appellant No.1 committed a grave illegality by terminating the distributorship agreement on the ground of the alleged violation of Clause 27 because, as a matter of fact, respondent No.1 did not violate any of the conditions mentioned in that clause. Shri Venkataramana then submitted that as the partnership entered into between respondent Nos.1 and 2 was not terminated in accordance with the provisions of the Indian Partnership Act, 1932 or the Deed of Partnership, appellant No.1 could not have terminated the distributorship agreement only on the basis of letters written by respondent No.2.

We have given serious thought to the respective arguments. At this stage, we do not want to express any conclusive opinion on the legality of action taken by appellant No.1 to terminate the distributorship agreement because the writ petition filed by respondent No.1 is pending adjudication before the learned Single Judge and in this appeal, we are required to examine only the legality and propriety of the interim order passed in the vacate petition. However, for the purpose of disposal of this appeal, we would like to apply the well-known parameters for considering the application for interim relief viz., prima facie case, balance of convenience, irreparable injury and public interest.

Since the writ petition has already been admitted, it is reasonable to presume that respondent No.1 has been able to make out a prima facie case for detailed examination of the legality of the action taken by appellant No.1 to terminate the distributorship

agreement.

The elements of balance of convenience and irreparable injury are also in favour of not vacating the interim order. A recapitulation of the facts show that appellant No.1 had granted permission to respondent Nos.1 and 2 to run the distribution agency as a partnership firm in the year 1986. For the next 20 years, no complaint appears to have been made by anyone regarding distribution of LPG cylinders by respondent No.1. The only ground on which appellant No.1 terminated the distribution agency by invoking Clause 27 of the Distribution Agreement was the request of respondent No.2 to surrender the distribution agency. The learned Single Judge went into the question whether respondent No.1 has violated any of the conditions enshrined in Clause 27 of the Distribution Agreement and held that there was neither breach nor default of any of the terms, conditions, covenants and stipulations warranting invoking of Clause 27. Prima facie, the view taken by the learned Single Judge appears plausible and legally correct. Therefore, the balance of convenience is in favour of respondent No.1 being allowed to continue the distribution agency till the decision of the writ petition.

We are further of the view that discontinuance of the distribution agency after a long period of 21 years pending writ petition causes irreparable injury to the 1st respondent.

We shall now consider whether it will be in public interest to allow the continuance of distribution agency of respondent No.1. At the cost of repetition, we consider it necessary to mention that the decision to terminate the distribution agency was taken by respondent No.1 only on the ground that one of the partners i.e. respondent No.2 has expressed his willingness to surrender the distributorship. It is neither the pleaded case of the appellants nor Shri R. Raghunandan

argued that the distribution agency was terminated on account of any fraud or grave irregularity in the distribution of gas cylinders to the consumers. Therefore, the public interest will not be jeopardized if respondent No.1 is allowed to distribute the LPG cylinders.

The argument of Shri R. Raghunandan that the writ petition should be held as not maintainable because one of the partners of respondent No.1 has unsuccessfully approached the Civil Court sounds attractive, but lacks merit. A perusal of the order passed by a learned Additional District Judge, Proddutur in I.A.No.974 of 2006 in O.S.No.17 of 2006 shows that respondent No.1 had approached the Civil Court at the stage of show cause notice i.e. before the termination of distribution agency. In our considered view, the writ petition is founded on a fresh cause of action, which accrued to the 1st respondent after rejection of the prayer of injunction by the Civil Court. Therefore, respondent No.1 cannot be non-suited only on the ground that it had earlier filed suit for injunction.

For the reasons stated above, the appeal is dismissed.

As a sequel to dismissal of the writ appeal, WAMP.No.674 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

C.V.NNAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 26.04.2007
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